

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

17-2056

74-2056

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B
P/S

ROBERT EDWARD WHITE,

Defendant-Appellant,

Docket No.
74-2056

-v-

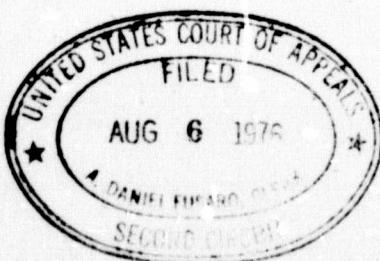
UNITED STATES OF AMERICA,

Appellee

On Appeal from the United States District
Court for the Northern District of New York

APPENDIX TO DEFENDANT-
APPELLANT'S BRIEF

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Appellant
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New York, New York 10005
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT EDWARD WHITE

Defendant-Appellant,

-v-

Docket No.
74-2056

UNITED STATES OF AMERICA,

Appellee

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- E. Excerpts from transcript of trial, closing argument of Paul V. French, Esq. in behalf of the United States, June 17, 1974.
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AL DOCKET
U.S. DISTRICT COURT

TITLE OF CASE

ATTORNEY'S

THE UNITED STATES

For U. S.:

S.E.D.

vs.

Hon. James M. Sullivan, Jr.
Counsel
French

RICHARD PATRICK CARRIGAN

(Jail) 1237 Stages, 2d fl.

ROBERT EDWARD WILSON

(Jail) 1237 Stages, 2d fl.

For Defendant:

Armand Riccio for both assigned
1237 Stages, 2d fl.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	7/13	245818		
J.S. 3 mailed	Marshal				
Vio'lation	Docket fee				
Title					
Sec.					

DATE
1974

Mar 13

Mar 20

Mar 18

June 10

June 12

June 13

PROCEEDINGS

Tiled Indictment-viol: JS ISC 2314 and 2-interstate transportation of stolen goods and aiding and abetting 1 ct JS2

Filled appearance bond Robert White-surety-Peerless Ins Co, Albany, no money

Filled appearance bond Richard Carrigan-surety-Peerless Ins Co, Albany-no money

Deft Carrigan is arraigned and pleads not guilty. Bail reduced to \$5,000

Deft White is arraigned and pleads not guilty. Bail reduced to \$5,000

Trial moved by U. S. Attorney, jury drawn and sworn. Mr. French will be in NYC June 11 at 2nd CCA to argue a case so this trial is adjourned to Wednesday, June 12 at 9:30 AM

Trial continued.

Trial continued. Govt rests. Mr. Riccio moves for dismissal on grounds stated. Motion denied. Mr. Riccio moves for continuance of trial until Monday, June 17 because he represents a client in jail, and is to appear for bail on his client. Motion granted. Trial in recess to 9:30 AM Monday, June 17. Juror No. 2 (male) is excused from further consideration of this case, alt No. 1 takes her place. Counsel for both sides and defts stipulate on record that in the event something should happen to two or more jurors that they will continue with the remaining number of jurors.

(Signature)
Allen B. Doggett
Deputy Clerk



PROCEEDINGS

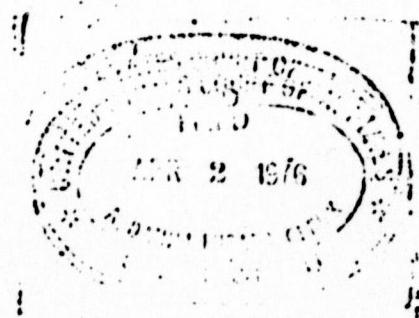
- 10 AM Mr. Riccio sums up for defts. 10:40 AM Mr. French sums up for Govt
 1:02 AM Judge MacMahon charges the jury and they retire at 11:37 AM in charge of two sworn officers, to consider their verdict. Alternate juror is excused from further consideration of case.
- The Jury, at 3:26 PM come into court and say they find the defendants Carrigan and White GUILTY AS CHARGED. Mr. Riccio moves to set aside the verdict as to both defendants, on grounds stated. Motions denied. Mr. French moves to reinstate \$50,000 bail for each defendant. Motion denied and defendants are confined on \$5,000 bail pending sentence. Pre-sentence investigation ordered. Sentence set for July 23 at 10 A. M. in Auburn, NY.
- Filed Govt exhibits 1-4,6-8, Court exhibit 1
- July 19** The Court advised defendant Carrigan of his right to speak in his own behalf, defendant spoke, his attorney spoke. Defendant is sentenced to be confined in any institution designated by the Attorney General for a period of eight years on count one. Defendant is granted the right to appeal, bail set at \$20,000. Remanded to custody of Marshal pending posting of bail. LIMacM JS3
- The Court advised defendant White of his right to speak in his own behalf, defendant declined, his attorney spoke. Defendant is sentenced to be confined in any institution designated by the Attorney General for a period of eight years on count one. Defendant is granted the right to appeal, bail set at \$20,000. Remanded to custody of Marshal pending posting of bail. LIMacM JS3
- July 19** Filed Notice of Appeal-Carrigan
- Filed Notice of Appeal-White
- July 23** Sent copies of docket sheet and Notices of Appeal to US Court of Appeals
 Sent copies of Notice of Appeal to US Atty
- July 22** Filed Judgment-Carrigan, 2 copies Marshal, 1 cpy Probation
 Filed Judgment-White-2 copies Marshal, 1 cpy Probation
- July 26** Filed Peerless Ins Co bond \$20,000. and bond form-Carrigan(for appeal)
 Filed Peerless Ins Co bond \$20,000 and bond form-White-appeal
- Aug 2** Filed Form A-Carrigan & White-signed by Judge MacMahon
- Aug 9** Filed CJA 20 form 5-Corrigan
 Filed CJA 20 form 5-White
- Aug 26** Filed Motion for Sept 4 to return property of defts
- Aug 27** Filed notice of service of motion-certificate of service
- Sept. 4** Motion for return of defendants' Property.- Motion granted. \$1,000 to Carrigan & \$1,800 to White. No opposition by gov't. Gov't to submit Order.
- 9/9/74** Order signed by Judge Foley direction release of \$1800 to Robert White, and \$1000.00 to Richard Carrigan.
- Oct. 18** Sent Certified copy of Record on Appeal to CCA, 2nd Cir.
- 3/31/75** Filed Order from U.S.Court of Appeals, second circuit dismissing appeal from judgments.
- 3/31/75** Stay of sentence being vacated by above order, delivered commitment to the U. S. Marshal.
- 4/18/75** Mr. Paul French heard in Argument on Motion for Revocation of Bail Motion granted.
- 4/22/75** Filed letter from Carrigan and White requesting information on steps to be taken to reinstate their bail.
- 4/23/75** Filed letter from Carrigan and White to Charles W. Ryan, Esq.
- 5/7/75** Filed Response to Complaint from Frederick G. Zichm
- 5/9/75** Filed letter to defts. from Judge Foley dated April 22, 1975
- 6/3/75** Filed executed commitment re: Richard Patrick Carrigan May 27, 1975 Lewisburg, Pa.
- 6/6/75** Filed Endorsement denying reduction of sentence, etc.
- 6/25/75** Filed Commitment of White



Allen B. Doggett
Deputy Clerk

PROCEEDINGS

- Filed Decision of Circuit Court of Appeals granting motion to vacate the dismissal of appeal.
- ✓ Filed Application for copy of Court records and endorsement of Judge MacMahon attached thereto granting same. Carrigan.
- Forwarded copy of endorsement and prior arrest record to Carrigan
- /75 Filed Copy of Briefing Schedule of U. S. Court of Appeals.
6. Filed transcript of proceedings held June 10, 1974 in Auburn, N.Y. before Hon. Lloyd F. MacMahon.



Allen B. Doggett
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

INDICTMENT

vs.

Cr. No. 3-R-A-1

RICHARD PATRICK CARRIGAN and
ROBERT EDWARD WHITE

(VIO: Title 18, U.S.C.,
Sections 2314 and 2)

COUNT I

THE GRAND JURY CHARGES:

That from on or about the 7th day of March, 1974,
to on or about the 8th day of March, 1974, RICHARD PATRICK
CARRIGAN and ROBERT EDWARD WHITE, the defendants herein,
wilfully, knowingly and unlawfully did transport in interstate
commerce from Gloversville, in the State and Northern District
of New York, to Haverhill, in the State and District of
Massachusetts, stolen goods, wares and merchandise, that is,
a quantity of leather goods consisting of raw and treated cow
hides, goat skins, suede leather skins and ladies cow hide
coats, of the value of approximately \$37,475.00, knowing the
same to have been stolen.

In violation of Title 18, United States Code,
Sections 2314 and 2.

A TRUE BILL

James J. Dineen
FOREMAN

James J. Dineen
UNITED STATES ATTORNEY

2A-CR No. _____

UNITED STATES DISTRICT COURT

NORTHERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA -

vs.

RICHARD PATRICK CARRIGAN

and ROBERT EDWARD WHITE

INDICTMENT

VIO: Title 18, U.S.C., Sections
2314 and 2

INTERSTATE TRANSPORTATION OF
STOLEN GOODS and AIDING & ABETTING
true b4l
One Count

24 months
forfeited

Filed in open court this _____ day
of _____, A.D. 19____

Clerk

Bail, \$ _____

Judge Foley

Att'd Riccio for both

3/13/74 Deft Carrigan is arraigned and pleads not guilty. Bail reduced to \$5,000.
Remanded to custody of Marshal.

Deft White is arraigned and pleads not guilty. Bail reduced to \$5,000.
Remanded to custody of Marshal.

6/10/74 Trial moved by US Atty. Jury drawn and sworn. Trial adjourned to June 12 at 9:30

6/12/74 Trial continued

6/13/74 Trial continued. Court rests. Mr. Riccio moves for dismissal on grounds stated.
Motion denied. Trial moved for continuance to June 17.

6/17/74 10:10 AM Mr. Riccio comes up for defts. 10:40 AM Mr. French comes up for Govt
11:02 AM Judge MacMahon charges the jury, and they retire at 11:37 AM in
charge of two sworn officers, to consider their verdict. The Jury, at
3:26 PM come into Court and say they find each defendant GUILTY AS CHARGED.
Mr. Riccio moves to set aside the verdict on grounds stated. Motion denied.
Mr. French moves to reinstate \$50,000 bail pending sentence. Motion denied
Defendants are continued on \$5,000 bail. Pre-sentence investigation ordered
Sentence set for July 23 at 10 AM at Auburn.

7/19/74 The Court advised defendant Carrigan of his right to speak in his own behalf,
defendant spoke, his attorney spoke. Defendant is sentenced to be confined in
any institution designated by the Attorney General for a period of eight years
on count one. Defendant is granted the right to appeal, bail set at \$20,000.
Remanded to custody of Marshal.

The Court advised defendant White of his right to speak in his own behalf,
defendant declined, his attorney spoke. Defendant is sentenced to be confined
in any institution designated by the Attorney General for a period of eight years
on count one. Defendant is granted the right to appeal, bail set at \$20,000.
Remanded to custody of Marshal, pending posting of bail

9/4/74 Motion for return of deft's property. Motion granted \$1,000 to
Carrigan \$1,800 to White-no opposition by gov't. Gov't submit Order

1 THE COURT: You are excused.

2 (Witness excused).

3 MR. FRENCH: The Government calls as its
4 next witness, Mr. DuMaine.

5 R E N E D u M A I N E

6 called as a witness in behalf of the
7 Government, being first duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FRENCH:

11 Q Mr. DuMaine, where are you employed?

12 A I am a Special Agent for the Federal Bureau of Investi-
13 gation.

14 Q How long have you been so employed?

15 A About twenty-three years.

16 Q In the course of your duties with the Federal Bureau of
17 Investigation as a Special Agent, have you had occasion
18 to participate in the arrest of a Robert White?

19 A Yes sir, I did.

20 Q And when did that occur?

21 A On March 9th, sir.

22 Q 1974?

23 A 1974.

24 Q Where did the arrest take place?

25 A In an apartment at 1234 Fifth Avenue, Schenectady, N. Y.

and at about 3:05 P.M.

Q Whose apartment was that?

Miss Georgiana Page.

4 Q After the arrest took place, did you then take Mr. White
5 to the office?

A. Yes. I took him to the Albany Office of the F.B.I.

7 Q When you got him there, did you advise him of his con-
8 stitutional rights?

9 A I advised him of his constitutional rights when I arrested
10 him really, and when I began the formal interviewing, I
11 gave him a form which he said he understood and signed.

Q Do you have that form with you?

13 A Yes sir, I do.

14 MR. FRENCH: Let this be marked.

15 (Form of interview marked as Government's
16 Exhibit Number 8 for identification).

17 MR. RIGGIO: I have no objection.

18 MR. FRENCH: No objection? We offer it
19 into evidence.

20 (Government's Exhibit Number 8 for identifi-
21 cation received in evidence).

22 BY MR. FRENCH:

23 Q Now I show you Government's Exhibit 8 in evidence and
24 ask you what it is?

25 A That is a form that we use to advise the individual of

1 his rights against self-incrimination and the right to
2 an attorney.

3 Q Would you read what this is?

4 A The form is, "Before we ask you any questions and that
5 you understand your rights, you have the right to remain
6 silent; anything you may say can be used against you in
7 a court of law; you have a right to talk to a lawyer
8 before we ask you any questions, and if you cannot afford
9 a lawyer, one will be appointed for you before any
10 questioning; if you so desire and decide to answer
11 questions now without a lawyer present, you will still
12 have a right to stop answering any questions at any time
13 and to get a lawyer." And underneath the rights is,
14 "I have read the statement of my rights. I understand
15 what my rights are. I do not want a lawyer at this time.
16 I understand what I am doing. No promises or threats
17 have been made to me and no coercion of any kind has been
18 used against me." And it is signed by myself as a
19 witness and by Special Agent Dunning.

20 Q And the constitutional rights are the same rights that
21 you orally told Mr. White when you made the arrest over
22 at Georgiana Page's apartment?

23 A Yes, it is.

24 Q Now after this was executed, did you ask the defendant
25 White some questions?

1 A Yes sir, I did.

2 Q And what were those questions and what did he say to you?

3 A I requested he advise me as to his whereabouts on the
4 evening of March 7th and the day of March 8th. He
5 advised me that on the evening of March 7th, he went to
6 the Living Room Lounge on State Street, Schenectady, New
7 York, arriving there about 8:00 o'clock and leaving
8 there approximately 2:00 A.M. He then advised me that
9 he went to the White Tower, I believe, in Schenectady,
10 New York, where he had a hamburger and left there about
11 3:00 o'clock in the morning, Friday morning. He drove
12 around a bit and then went to Mrs. Paige's residence.
13 She was not home. He went from there to the Gateway
14 Diner in Albany where he was waited on by a waitress
15 named Barbara, whose last name he doesn't know. He also
16 advised that at that time he met with an individual named
17 Tommy Marucci--that is phonetical--we both didn't know
18 how to spell the name. He left there at approximately
19 5:30 in the morning, went to Mrs. Paige's residence and
20 stayed there the rest of the morning until approximately
21 11:00 o'clock on Friday, which would be March 8th. He
22 left there at 11:00 o'clock. He tried to have his car
23 repaired because he was having trouble with his universal
24 joints. He was unable to get the car repaired. He went
25 to the Colonie Shopping Center area to shop. Later on

DuMaine-Direct

1 that evening, he went to Carrigan's apartment where
2 Carrigan and his wife were present and the couple next
3 door were present and stayed there for the rest of the
4 evening.

5 Q That is what defendant White told you that were his
6 activities from March 7th to March 8th?

A Yes. I asked specific questions, but that is the story.

8 Q And all restaurants and places he mentioned are located
9 in Albany or Schenectady and the apartment of Carrigan
10 is located in Rensselaer, East Greenbush?

11 A Yes. I am not too familiar with Carrigan's apartment
12 but I believe it is in East Greenbush.

13 Q And Georgiana Paige's residence is in Schenectady?

14 A Yes.

15 Q Where he evidently spent the night?

16 A Yes, sir.

17 MR. FRENCH: I have no further questions.

CROSS-EXAMINATION

19 BY MR. RICCIO:

20 Q With reference to Mr. White, did you have occasion to
21 inquire of him whether he had participated in the burglary
22 in question?

23 A Yes, I did.

24 Q And what was his response to that?

25 A He denied any involvement. He said he wouldn't admit

1 his involvement even if he was involved.

2 Q He denied his involvement and then said he wouldn't
3 admit his involvement if he was involved?

4 A Yes.

5 Q Did Mr. White tell you that he and Dick Carrigan initiated
6 the sale for Mr. Ragone with a Mr. Greenberg in Massachu-
7 setts?

8 A No, he did not.

9 Q Did he say anything with reference to that point?

10 A I advised him that the individual to whom the leather
11 had been sold identified he and Carrigan as being the
12 sellers and that is when he said even in face of that
13 he said he would deny any involvement.

14 Q Did he acknowledge that he did negotiate the sale on
15 behalf of Mr. Ragone with Mr. Greenberg?

16 A No, sir, he denied that.

17 Q Was Mr. Carrigan questioned at that time?

18 A He was being questioned by other agents. I was not
19 present.

20 Q Do you know Mr. Ragone?

21 A No sir, I do not.

22 Q Or Mr. Southwick?

23 A No, sir.

24 Q I take it then your participation in this case is just
25 within the limits that you testified to?

1 A To what I have testified, yes.

2 MR. RICCIO: Alright. Thank you very
3 much.

4 THE COURT: Alright. You are excused.

5 (Witness excused)

6 MR. FRENCH: If the Court please, I have
7 some more leather which is downstairs, which
8 I want to bring up and have marked and put
9 into evidence by a stipulation with Mr. Riccio,
10 and I believe after that is completed the
11 Government will rest its case.

12 THE COURT: Well it will take you some time
13 to do that?

14 MR. FRENCH: It will.

15 THE COURT: Alright. We will take our
16 luncheon recess now until 2:00 o'clock. Don't
17 talk about the case; don't let anybody talk
18 about it to you.

19 THE CLERK: Court stands in recess until
20 2:00 P.M.

21 (Whereupon at 12:10 P.M., an adjournment
22 was taken to 2:00 P.M. of the same day).

23

24

25

1 got on the stand and he didn't say to you,
2 "We don't know anything with reference to this
3 matter." He didn't say that. He told you,
4 and it may well be a crime in some phase, I
5 don't know, but he told you that he had made
6 a contact for this merchandise to be sold.

7 Now you are grown men and women, you know how
8 people act in certain segments of life. One
9 might say didn't they know where the stuff was
10 coming from, they should have known better, but
11 when you are hustling for a buck they don't
12 ask a lot of questions.

13 The details of the sale were given to you
14 and yet the two young men would have you believe
15 they were nothing but mechanical men, robots
16 controlled by White and Carrigan. I put a
17 serious question mark on that.

18 For instance, Greenberg, now he is the
19 smart one, isn't he, the college man. Isn't
20 it funny that this very moment Mr. Greenberg
21 is attending classes in school, and he was
22 probably the biggest crook in this room. He
23 is the one, yes, he is out of it, some phantom
24 visitor came, he didn't know a thing. He said
25 his own father was a crook. His father told

him how he had stolen goods. How low can you think? His father is beyond, in the grave not able to come here and defend himself, but he says his own father is a thief, and yet he is not. He said, I don't know, but yet you remember he said Carrigan--forty cents, that is what they get for legitimate stuff, that is, Greenberg, and yet the Government didn't indict Mr. Greenberg, and I say that Greenberg is a very guilty person here. Mr. Zikos. I would say to you if he didn't know it was stolen, how would White and Carrigan know it was stolen?

If the Government is going to say Zikos
should have known it was stolen, how about
White and Carrigan? They are just looking for
a buck, they aren't Oxford scholars. But this
one thing they didn't do, they didn't transport
these goods in interstate commerce, and I
submit Mr. Carrigan told you that Ragone and
Southwick were acting as independent agents,
that they had set up this job apparently or else
through a contact and had approached them and
they went out and found a buyer for them, and
that they would not say that they actually

1 transported anything, they merely told them
2 where to bring it, the transportation was done
3 by these two young men. I think this is a
4 distinction which you must draw and find these
5 two defendants innocent of the charges before
6 the court.

7 Now as you all know there is no obligation
8 on the part of the defendants to take the
9 stand, so one did and one didn't, but I would
10 say this to you, the fact Mr. Carrigan did
11 take the stand is significant. I think what
12 he had to tell us is significant.

13 Mr. French made a lot of to-do about the
14 fact they took \$4,000, but if you will recall
15 the testimony as to the value of the merchandise
16 in question here, certainly this figure is not
17 out of place, not out of line, so to speak,
18 compared to what the value of the items which
19 were contracted to be sold for, the commission
20 paid isn't exorbitant.

21 So I think to be very brief about this,
22 that if you look at all the evidence. If you
23 believe these two young men when they say,
24 "Well, they approached us and told us to get a
25 truck," if you believe that, then of course

the defendants would appear to be guilty, but if you believe Mr. Carrigan that they approached Carrigan, and if you believe they have a great deal at stake here, and if you believe that the Government could have very easily gone to the Hungry Bear or gone to any of these places mentioned and gotten witnesses to say--when Carrigan says they never were there--but there was no rebuttal of Mr. Carrigan's testimony, and certainly the Hyatt House, the Hungry Bear, all the others, if in fact they were there the Government could have rebutted this, but they didn't do so and I say on the evidence here before you, the inference can be drawn that it is as Mr. Carrigan described, that he was merely--he and White were merely entrusted with unloading this load of leather, finding a buyer, and that the actual burglary, the transportation of it was done as independent contractors by Ragone and his constituent Southwick.

You may not like what was done here, the thought that they went out and found a buyer for this stuff, you may say to yourself they should have known better, but the Government

1 has not shown outside of these two men that
2 they had any knowledge the stuff was stolen,
3 except by inference, and as I said there is no
4 demonstrative proof of fingerprints or anything
5 to tie them in, there is no disinterested party
6 to tie White or Carrigan in with the events
7 that began with the warehouse, there is no
8 telephone toll call showing that White or
9 Carrigan called there. The statement was made
10 that they arrived at the Hungry Bear. There
11 is no one here saying that.

12 I think here you have a case and you might
13 call it a case of all interested parties.
14 Fortunately for Mr. Greenberg, he is out of it.
15 and he is the one that loves to get stolen
16 leather. Mr. Zikos the dealer in leather
17 doesn't know it was stolen, although imprinted
18 on the boxes is the name of the company and
19 you have Ragone and Southwick who admitted
20 they burglarized this place, broke in with a
21 two by four, and met White and Carrigan there.
22 We didn't do it because we wanted to do it but
23 because we are told to do it.

24 The only people here who say they are
25 innocent, and we are going to go forward and

1 we did do something with reference to this,
2 but we didn't burglarize the warehouse, we
3 didn't transport, merely on the terminal end,
4 Massachusetts, we arranged the purchase. They
5 stand before you and have stood before you for
6 the past several days.

7 Now the preponderance of evidence certainly
8 lies with the Government, but I think if you
9 take occasion to serve as microscopes, so to
10 speak, and dissect and synthesize what has
11 been brought before you, consider each separate
12 flick, you will see that when you shake the
13 chaff from the corn that the actual persuasive
14 dynamics, so to speak, and devastating evidence,
15 it is of small quantity and questionable tex-
16 ture. Everyone here seems to have an interest.
17 The only thing, silent thing that speaks well
18 is the leather itself, which stands there in-
19 adamant, but other than that we have all
20 interested parties all looking to save them-
21 selves, and the Government of the United States
22 will say to you, "Ladies and gentlemen, convict
23 these men, convict these men and send them per-
24 haps to whatever punishment the court may see
25 fit to impose, based solely on the testimony

1 of these questionable characters, if I might
2 use that, not in a disrespectful manner, but
3 I see nothing before this court, before this
4 jury which I would look to as a person and
5 individual and say, "Boy, that's pretty
6 persuasive, that is good evidence." Everyone
7 here had a reason to say what they said, so
8 did Richard Carrigan, but bearing in mind
9 Richard Carrigan is not pointing his fingers
10 all over the place as these others have done,
11 and I would say, it is an old cliche, perhaps
12 it is better that a million White's and
13 Carrigan's walk out the doorway than perhaps
14 an innocent person be sent to some punishment
15 based on the evidence of people who are tainted
16 and have a reason to misconstrue and mis-
17 represent, and I think if you take each individual
18 that the Government is turning to you and say-
19 ing to you these are the people that we want
20 you to believe, we want you to convict the
21 defendants on this. I think you see my point.
22 Mr. French knows, he is a very capable
23 attorney, that this is the case, and it is so
24 intermixed, intermeshed, so to speak, with these
25 questionable witnesses he has seen to bring in.

1 People of quality, for instance the airline
2 agent, well, we never denied we took the plane.
3 but he made a nice impression, came from
4 Washington to tell you Richard Carrigan went
5 on the plane, but they are not charged with
6 that.

7 The man from the warehouse said the value
8 of the merchandise, he was a nice man, we
9 never doubted the value of the merchandise, in
10 fact if you will note, ladies and gentlemen,
11 at no time was a witness brought forward by
12 the Government that we objected to. We
13 certainly felt that the demonstrative aspects
14 have been brought out to you. For instance,
15 the checks were in payment of the merchandise.
16 Mr. Carrigan told you how he and White took
17 their commission out first.

18 Now you may sit there and say, "What creeps,
19 take the four grand and blow town," but that
20 is what you are dealing with here. I am not
21 calling them creeps, we are not dealing with
22 Phi Beta Kappa, but they are citizens and
23 entitled to a trial. They took their dough
24 and blew.

25 From the testimony certainly it is apparent

1 there was a great deal more coming. I think
2 it is very significant and it shows the
3 vicarious relationship of perhaps agents on
4 their part to the principal. They took
5 \$4,000, and certainly it would appear the
6 remainder of this value was several thousands
7 of dollars, but they only got \$4,000 for their
8 participation in the sale, so I think that is
9 persuasive, and this is not rebutted, the
10 Government didn't rebut that, in fact I don't
11 really remember what Mr. Carrigan said in its
12 entirety, but from what he said, aside from
13 some areas, there has been no rebuttal of what
14 Mr. Carrigan said.

15 Did the Government bring back Southwick or did
16 they bring back Ragone and say they are liars,
17 They told us what to do, they are our boys,
18 we didn't go to them and say we had a load?
19 There was no rebuttal. Carrigan said that they
20 went to them so that is rather persuasive.
21 I am sure with all its instrumentalities and
22 all the teletypes and whatever they have at
23 hand, the Government could have brought back
24 these individuals, if in fact we had misspoken
25 the truth.

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1 So I will conclude here now simply by
2 saying we have here a situation, and it is not
3 uncommon in the underworld, so to speak, where
4 a job is planned, I would assume, and infer
5 that Ragone and Southwick had the contact.
6 Remember some mention about an old car looked
7 like a police car with two aerials or something?
8 I think that that was the contact that the boys
9 had to hit this warehouse, and anticipating
10 this particular end they ran into White and
11 Carrigan and indicated, asked them to be part
12 of it, and Carrigan had in turn been told
13 by someone else there was a guy in Massachusetts
14 who might be interested. You heard Mr. Green-
15 berg called back and forth, the contacts before,
16 how they met them at Howard Johnson's, this
17 Greenberg wanted this load, and let's face it,
18 about \$37,000, what a haul for he and Zikos,
19 but in any event he makes the contact, and this
20 is very persuasive, ladies and gentlemen, if
21 you remember Mr. Greenberg said that Carrigan
22 told him, he didn't know when, but now he would
23 have to say that based upon what he was being
24 told by Ragone they would let him know when
25 they were going to do the job. Then you will

1 remember how Carrigan told us this was the
2 day they met at the Hyatt House and on the
3 boys went and they said they would meet in
4 Massachusetts, so I think you have an independent
5 overt act and occurrence, the burglary. White
6 and Carrigan were never charged with burglary,
7 the two boys were by the State Police. This
8 is significant if this was something that
9 Carrigan and White planned, if this was some-
10 thing they conceived, if this was something they
11 originated and these two boys were merely agents,
12 employees, mere dupes, but I submit to you,
13 ladies and gentlemen, wasn't the fact Carrigan
14 and White were arrested by the State Police
15 when they were and charged with burglary, since
16 they were the initiators and creators, but the
17 record will show that this was not the case,
18 these two young men were arrested by the State
19 Police and charged with burglary, they implicated
20 White and Carrigan, initially they implicated
21 them, and in this courtroom, but I think it was
22 partially to save their own hides, perhaps
23 after the admission of a beating, I don't know,
24 but in any event they robbed this warehouse,
25 they transported the stuff from Massachusetts,

1 White and Carrigan arranged the sale.

2 Now if the charge here were some conspiratorial
3 charge, if they were being charged with, say,
4 selling stolen goods across the state line or
5 something, perhaps they would fit, but the
6 only charge that the United States Government
7 has seen fit to levy here, and it is quite
8 clear, they charged these two defendants with
9 transporting across the state line stolen good..

10 Now if you take the word "transport"
11 literally, the charge is ridiculous, but let
12 me say this, if you take an agency point of
13 view, if they in effect caused these boys to
14 rob this place and do all these things, then
15 from a vicarious point of view, an agency point
16 of view, they might have caused this act, but
17 I think the fact the State Police didn't arrest
18 them, they had no complicity in the burglary,
19 all the boys say is they told us to go there,
20 and in any event the State Police didn't think
21 that White and Carrigan were involved.

22 So I say here you have independent contractors
23 they have got the stuff, White and Carrigan are
24 independent contractors in Massachusetts trying
25 to unload it. Maybe they are not nice guys,

1 offensive during the course of this trial,
2 and I want to thank you very much for your
3 kind attention. I did note during my pre-
4 sentation and Mr. French's that you were very
5 attentive, and we appreciate that, the defendants
6 do, and I am very confident after you consider
7 maybe some of what I said here today, that you
8 may not like it, but that you will come back
9 and find these defendants not guilty.

10 Thank you.

11 MR. FRENCH: May it please the Court,
12 ladies and gentlemen, at this time the Govern-
13 ment will conclude its case and the case will
14 then become yours to decide.

15 The Government has met the burden, as I
16 said at the outset. I said that I would prove
17 their guilt beyond a reasonable doubt, that
18 they are guilty of this charge, and that is the
19 only thing you are concerned with here today,
20 whether or not they violated that indictment.
21 Don't concern yourselves with perhaps there
22 may be or should be other charges, state, local.
23 This investigation is continuing.

24 This is a classic case, ladies and gentle-
25 men, of why Congress enacted this very statute.

1 This is not an ordinary local burglary, it is
2 much more than that. This is wholesale leather
3 moved, almost \$38,000 worth, moved in inter-
4 state commerce.

5 Don't be fooled here by Mr. Riccio's
6 argument that they weren't charged with the
7 local burglary. They were already arrested and
8 in jail and charged by the F.B.I. with this
9 crime, which is the more serious one, because
10 this affects more than one state.

11 It was subsequent to that that Southwick
12 and Ragone were apprehended by the State Police
13 and engaged a full account voluntarily as to
14 what went on, what role they played in this
15 interstate crime, and mind you the young South-
16 wick says he was beaten. I want you to know
17 this, that I don't condone anything like that
18 if it did occur, but he was asked repeatedly
19 by me and by the court if there is anything he
20 was saying to you people in this case that he
21 would change because somebody laid a hand on
22 him, and his answer to that was no, I am tell-
23 ing you the truth even though I didn't like to
24 be hit or pushed around, but I am still telling
25 the truth here.

Now what role did these two young men play
in this case? They were truckdrivers, they
were the agents of these two defendants to get
the leather over into Massachusetts. By the
very nature of the manner they were paid it
shows they weren't running the whole operation.
they got five hundred dollars apiece out of a
payment of over \$5,000. Carrigan says they got
\$4,000, admits that. Who got on the stand here
before you ladies and gentlemen and tried to
make you believe that he was a laid off iron
worker and now he is in the leather business,
this is his first occasion in the leather
business. He makes these mysterious contacts
over in Massachusetts some few weeks before the
burglary takes place. Even as late as 1:00
o'clock in the morning of March 8th when he
meets with Ragone and Southwick and he says he
met with him in that Ramada Inn over at the
Springfield exit. At this stage there is still
no discussion as to what his role is or how
much he is to make or anything else from the
two people he wants you to believe that are
running this thing for somebody else.

Now I submit to you, analyze that kind of

1 testimony and as you arrive at your verdict
2 here keep in mind what was said here and use
3 your common sense.

4 I don't want to belabor the case with you,
5 but I brought everybody in here that I could
6 possibly bring in here.

7 Now why was the tickets. The plane tickets?
8 You recall the F.B.I. Agent Rene DuMaine in
9 questioning Mr. White after he signed the waiver
10 of rights, White says he was in the Schenectady
11 area on March 9, right through March 9. The
12 tickets show through Alleghany Airlines that
13 he wasn't in Schenectady, he had taken a plane
14 back from Boston the morning of March 8th.
15 These are just some of the minor inconsistencies
16 that were brought out through Mr. Carrigan by
17 Mr. Riccio. I really don't know what he wants
18 you to believe. He is telling you one minute
19 they are nothing but guys out for a buck, he
20 is telling you another minute they are over in
21 Massachusetts arranging a sale of this leather
22 The whole truckload the night before was in the
23 Fenville Company belonging to somebody else.
24 They are involved in it from the word go, from
25 Gloversville to Massachusetts, and they are

1 getting the biggest piece of dough out of it,
2 and that is what the case is about. They hired
3 Ragone and Southwick to drive the truck. Just
4 analyze that, the business with the cars, that
5 in and of itself can infer that they didn't
6 want to see either one of their cars over in
7 Gloversville, so whose car did they take,
8 White's. They get it back to him and they move
9 in their own car. They have to take White's
10 car for some feeble excuse and that is 4:00
11 o'clock in the afternoon the day of the bur-
12 glary.

13 There is no denial here that Carrigan was
14 over there at Zikos place, when Zikos turned to
15 identify him he wasn't sure he could identify
16 him. He stood right up, his lawyer stipulated
17 he was there. These people have been identified
18 here on both ends of this transaction.

19 Now don't be fooled with that word "trans-
20 portation." It is just as much transportation
21 if I tell you to drive the truck and I will
22 meet you there as it is if I drive the truck
23 myself. I mean transportation of stolen goods
24 in interstate commerce could involve nine
25 tractor-trailer loads and I could sit in my

1 office and move them and still be transporting
2 in interstate commerce, and this court will so
3 charge you that. So I submit to you ladies
4 and gentlemen it has not been a long trial, the
5 testimony took only about two and a half days,
6 so I will leave this case with you and your
7 good judgment. But what the Government seeks
8 from you based on the proof is a verdict of
9 guilty as charged against all these defendants.

10 Thank you very much.

11 THE COURT: We will take a short recess.

12 (A short recess was taken and the jury left
13 the courtroom and the following proceedings
14 took place outside the presence of the jury).

15 THE COURT: Do you want a charge with
16 respect to Mr. White's not taking the stand,
17 inasmuch as I do have to charge as to Mr.
18 Carrigan?

19 MR. RICCIO: If you would I would appreciate
20 it.

21 THE COURT: Alright.

22 (The following proceedings took place in
23 the presence of the jury).

24 THE COURT: The court and the jury have
25 different functions. It is now my function and

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duty to instruct you on the law that applies
to this case, and it is your duty to accept
the law as I give it to you, whether or not
you agree with it, and to apply it to the facts
as you find them, and in short I am the exclusive
judge of the law, you on the other hand are the
exclusive judges of the facts. You and you
alone decide what weight, what effect and what
value you will give to the evidence. You
decide whether or not to believe a witness,
and of course ultimately you decide the guilt
or innocence of each defendant on trial in this
case.

You are not to conclude from any rulings
I have made throughout this trial or any
questions that I have asked that I have any
opinion one way or another as to the guilt or
innocence of either of these defendants. That
decision is entirely up to you.

Now finding the fact is merely a process
by which you, the jury, consider the exhibits
and the testimony of all the witnesses, sift
out what you believe, weigh it in the scale of
your reasoning powers and draw such conclusions
as your experience and common sense tell you

1 the evidence supports and justifies, and decide
2 just where the truth lies in this case.

3 In this connection it is your memory of
4 the evidence that controls, it is not the way
5 I remember it, not the way the counsel remember
6 it, if your memory squares with what the law-
7 yers said, what they told you as to their
8 version of the evidence during their closing
9 arguments, you may accept what they said, but
10 to the extent that you have a different memory,
11 you are bound by your oath to rely on your
12 memory.

13 Now in this connection sometimes juries
14 are only out a little while and they send me
15 a note saying they want the entire transcript
16 or entire testimony of a witness. The court
17 reporter's notes are not transcribed right
18 away so there is no transcript, and you are
19 supposed to rely on your memory. If you can't
20 remember, one of your fellow jurors can remember
21 and thereby help you refresh your recollection.
22 but if after indulging in that process you still
23 would like to have the testimony of any witness
24 read back to you, send me a note and the court
25 reporter will read it back. But I ask you to

1 use some restraint about this. This has been
2 a very simple case, the evidence isn't very
3 complicated, and I am sure that one or more
4 of you can remember it fully and you will all
5 remember it after fully searching your memory
6 and discussing it.

7 Now one of your most important functions
8 is to determine just where the truth lies.
9 It is your exclusive function to decide which
10 witness' you will believe, and this is so as
11 to every witness, whether called by the Govern-
12 ment or by the defense.

13 You are not to be influenced by the number
14 of witnesses called by either side or by the
15 number of documents received in evidence, you
16 are concerned not with the quantity of the
17 evidence but with the quality of the evidence.

18 The first test which you should apply in
19 determining the trustworthiness of a witness
20 is to measure what he says against your plain
21 every day common sense. You are not bound to
22 believe unreasonable statements or to accept
23 testimony that defies your common sense or
24 insults your intelligence just because the
25 statements are made in a courtroom or a witness

1 stand under oath.

2 You saw the witness' in this case. In
3 deciding whether to believe a witness you should
4 consider not only what is said but also his
5 conduct and his manner and his behavior on the
6 stand. I saw you watching the witnesses here
7 with particular care as they were testifying,
8 obviously you were sizing them up. How did
9 the witness impress you? Was the witness being
10 frank with you? Was he being evasive? Did
11 his version of the facts appear to be straight-
12 forward? Was he trying to conceal some of the
13 facts? Was he just parrotting answers? Did he
14 have any motive to testify falsely? Is he
15 interested in any way in the outcome of this
16 case? How strong or weak was his memory of
17 important events? In short, can you rely on
18 him, can you trust him, was he hostile or
19 friendly to any party?

20 You ought to consider also his opportunity
21 to know the facts about which he testified and
22 the probability or improbability of what he
23 said. How does his testimony add up when
24 considered with all the evidence? How far does
25 his story check out with the other evidence?

1 Are there any inconsistencies in his story,
2 and if so, how important are they?

3 Now the witnesses Greenberg, Ragone and
4 Southwick testified that they had participated
5 in the crime charged here. If you believe that,
6 then they were accomplices and you should con-
7 sider that fact in testing their credibility
8 and weighing their testimony. Obviously a
9 witness is not incapable of telling the truth
10 about occurred simply because he is an accom-
11 plice. Nevertheless, you must examine an
12 accomplice's testimony with special care and
13 act upon it with caution.

14 In the prosecution of a crime, the Govern-
15 ment is frequently called upon to use persons
16 who are accomplices, often it has no choice.
17 They are properly used. After all the Govern-
18 ment must rely upon witnesses to transaction
19 such as they are, otherwise in many instances
20 it would be difficult to detect and to prosecute
21 wrongdoers. There is no requirement that the
22 testimony of an accomplice be corroborated.
23 That simply means that his testimony be supported
24 or backed up by other evidence. Conviction
25 may rest upon the testimony of an accomplice

1 alone if you believe it.

2 The credibility of Greenberg, Ragone and
3 Southwick like that of all the witnesses is
4 for you and you alone to determine, taking
5 into account the interest of the witness, his
6 motive, any inducement or consideration he may
7 have received or he may hope to receive from
8 the Government, any hostility he may bear toward
9 any defendant, any other evidence you recall
10 which may reasonably be considered to influence
11 and color his testimony.

12 Now the defendant Richard Carrigan testified
13 as a witness. He was not required by law to
14 do so, and his appearance as a witness was
15 entirely voluntary on his part. If he had not
16 testified his failure to take the stand could
17 not have been considered by you in any manner
18 in determining his guilt or innocence, but
19 having taken the stand the law requires that
20 his testimony be judged and appraised by the
21 same standards supplied to the testimony of any
22 other witness, giving consideration of course
23 to his background, to his personality and to
24 his natural interest in the outcome of this
25 trial.

The defendant Carrigan testified that he had been convicted of a crime in the past. This was brought out on cross-examination. You may consider that fact in determining his credibility and the weight to be given to his testimony, but you may not consider his conviction of any other crime as evidence that he committed the crime charged here.

The defendant Edward White did not take the stand. A defendant is not required to take the stand and testify in his own behalf. He has a constitutional right to depend and place his faith entirely upon the evidence presented by the Government. He has no burden of proof to sustain in this case. He has denied the charges made against him by his plea of not guilty and he is presumed to be innocent. The fact that White did not testify cannot be taken into consideration by you in any manner. You may not permit that fact to weigh in the slightest degree against him, nor should that fact even enter into your discussions or deliberations in any way in determining his guilt or innocence.

Now if you find that any witness has

1 deliberately and willfully lied with respect
2 to any material facts in his or her testimony
3 offered at this trial, you may follow either
4 one of two courses; you may accept as much of
5 the witness' testimony as you believe, or if
6 you wish you may reject his entire testimony.

7 Before discussing the crime charged here,
8 I want to remind you that an indictment is a
9 mere accusation. It is not evidence of the
10 truth of the charge made, and you are to draw
11 no inference of guilt from the mere fact that
12 the defendant has been indicted. An indict-
13 ment simply means that a defendant has been
14 accused of a crime, and I have said to you that
15 the defendant has denied--both defendants have
16 denied the charge here by their pleas of not
17 guilty, and the defendant Carrigan denied his
18 guilt on the stand.

19 Now no defendant has any burden of proof
20 to sustain in this case. He is under no
21 obligation to produce any witnesses. He is
22 presumed to be innocent, and this presumption
23 of innocence continues throughout the trial
24 and during the deliberations of the jury. This
25 presumption of innocence is overcome when and

1 only when the Government establishes the
2 guilt of a defendant beyond a reasonable doubt.

3 Now what do I mean by beyond a reasonable
4 doubt? As the phrase implies, a reasonable
5 doubt is a doubt that is based upon reason, a
6 reason which appears in the evidence or in the
7 lack of evidence. It is not some vague,
8 speculative, imaginary doubt, nor a doubt based
9 upon emotion, sympathy or prejudice, or based
10 upon what some juror might regard as an un-
11 pleasant duty. The Government is not required
12 to prove a defendant guilty beyond every
13 possible doubt nor to an absolute or a mathe-
14 matical certainty, because such measure of
15 proof is usually impossible in human affairs.

16 You should review all of the evidence as
17 you remember it. Sift out what you believe,
18 discuss it, analyze it, weigh and compare your
19 view of the evidence with your fellow jurors.
20 If that process produces a solemn belief or
21 conviction in your mind such as you would be
22 willing to act upon without hesitation if this
23 were an important matter of your own, then you
24 may say that you have been convinced beyond a
25 reasonable doubt.

1 On the other hand, if after that process
2 your mind is wavering or so uncertain that
3 you would hesitate before acting if this were
4 an important matter of your own, then you have
5 not been convinced beyond a reasonable doubt
6 and your verdict must be not guilty.

7 Now the indictment in this case charges
8 that from on or about March 7, 1974 to on or
9 about March 8, 1974, Richard Patrick Carrigan
10 and Robert Edward White, the defendants,
11 wilfully, knowingly and unlawfully did trans-
12 port in interstate commerce from Gloversville,
13 in the State and Northern District of New
14 York, to Haverhill, in the State and District
15 of Massachusetts, stolen goods, wares and
16 merchandise, that is, a quantity of leather
17 goods consisting of raw and treated cow hides,
18 goat skins, suede leather skins and ladies
19 cow hide coats, of the value of approximately
20 \$37,475.00, knowing the same to have been
21 stolen.

22 In essence each defendant is charged with
23 alleged violations of the United States
24 statute which provides in pertinent part as
25 follows: "Whoever transports in interstate

1 commerce "any goods, wares or merchandise of
2 the value of \$5,000 or more, knowing the same
3 to have been stolen, shall be guilty of a
4 crime."

5 You should consider each defendant separately.
6 In order to convict a defendant of the crime
7 charged here, the Government must prove to your
8 satisfaction beyond a reasonable doubt each
9 of the following elements: (1) that from on
10 or about March 7, 1974 to on or about March 8,
11 1974, the defendant whom you are considering
12 knowingly and wilfully transported the mer-
13 chandise described in the indictment in inter-
14 state commerce, or that he knowingly aided and
15 abetted or knowingly caused another or others
16 to do so. This element, the first element is
17 satisfied therefore if you find that the
18 defendant whom you are considering knowingly
19 and wilfully aided and abetted or caused another
20 or others to transport the merchandise from
21 Gloversville, New York to Haverhill, Massachu-
22 setts.

23 The second element is that the merchandise
24 was stolen. The third element is that the
25 defendant whom you are considering knew that

1 the merchandise had been stolen.

2 Now the second element is satisfied if you
3 find anyone--it doesn't have to be the defendant--
4 knowingly took these leather goods from the
5 Frenville Company with an intent to steal it
6 or to deprive Frenville Company of the benefit
7 of ownership.

8 The fourth element is that the value of
9 the merchandise was more than \$5,000. Value
10 simply means the price which a willing buyer
11 would pay and which a willing seller would
12 accept.

13 You have heard me say it is not necessary
14 for the Government to prove that these defendants
15 themselves transported this merchandise, that
16 it is sufficient that the Government proves
17 beyond a reasonable doubt that they aided and
18 abetted or caused another to transport these
19 goods. The law provides that a person who
20 aids and abets another to commit a crime is
21 just as guilty of that crime as if he committed
22 it himself. Accordingly you may find the
23 defendant whom you are considering guilty of
24 the crime charged in the indictment if you
25 find beyond a reasonable doubt that the

1 defendant aided or abetted some other person
2 in the commission of the crime charged.

3 Here the Government contends that each of
4 the defendants now on trial aided and abetted
5 Ragone and Southwick to commit the crime of
6 transporting stolen merchandise in interstate
7 commerce, with knowledge of the fact that the
8 merchandise had been stolen.

9 Before you can convict a defendant for
10 aiding and abetting, however, you must find
11 that the crime was committed by another, here
12 Ragone and Southwick, and that the defendant
13 whom you are considering knew the goods had
14 been stolen and consciously associated himself
15 with the criminal venture with the intent that
16 his conduct would help it succeed in transport-
17 ing the stolen goods in interstate commerce.

18 You must be convinced beyond a reasonable
19 doubt that the defendant was doing something
20 to aid the crime or to forward the crime of the
21 other person, that he was a conscious, knowing
22 participant in the crime with a stake in its
23 success, rather than a mere witness or spectator
24 or bystander on the scene of a crime committed
25 by another.

1 Now possession of property recently stolen
2 is not satisfactorily explained, is ordinarily
3 a circumstance from which you the jury may
4 reasonably draw the inference and conclusion
5 in light of the surrounding circumstances
6 shown by the evidence that the person in possess-
7 ion knew that the property had been stolen,
8 and not only knew that it was stolen but also
9 participated in some way in the theft of the
10 property. And possession in one state of
11 property recently stolen in another state if
12 not satisfactorily explained is ordinarily a
13 circumstance from which you may draw the
14 inference and find in light of the surrounding
15 circumstances shown by the evidence that the
16 person in possession not only knew it to be
17 stolen property but also transported it or
18 caused it to be transported in interstate
19 commerce.

20 The term "recently" is a relative term and
21 has no fixed meaning. Whether property may be
22 considered as recently stolen depends upon the
23 nature of the property and all the facts and
24 circumstances shown in the evidence. The longer
25 a period of time since the theft, the more

doubtful becomes the inference which may reasonably be drawn from unexplained possession.

If you find beyond a reasonable doubt from the evidence that the leather goods described in the indictment were stolen, and that while recently stolen the property was in the possession of the accused in another state, you may from those facts draw the inference not only that the leather goods were possessed by the accused with knowledge of it, but with knowledge of it that the property was stolen, but also that the accused transported the goods or caused them to be transported in interstate commerce with knowledge of the fact they were stolen.

Unless possession of the recently stolen property by the accused or possession by the accused in such other state is explained to the satisfaction of the jury by other facts and circumstances shown in the evidence.

In considering whether possession of recently stolen property has been satisfactorily explained, you are reminded that in the exercise of constitutional rights the defendants need not take the witness stand and testify. There

1 may be opportunity to explain possession by
2 showing other facts and circumstances independent
3 of the testimony of the defendants.

4 You will also bear in mind that the law
5 never imposes upon a defendant in a criminal
6 case the burden or duty of calling any witnesses
7 or producing any evidence. It is the exclusive
8 function of the jury to determine whether the
9 fact and circumstances are shown by the evidence
10 warrant an inference which the law permits you
11 to draw from possession of recently stolen
12 property. If any possession the accused may
13 have had of recently stolen property is con-
14 sistent with innocence, or if you entertain a
15 reasonable doubt of guilt, you must acquit the
16 accused.

17 Now possession is of two kinds, it can be
18 actual possession, which simply means having
19 direct, physical control over a thing at a
20 given time, such as holding it in one's hand
21 or carrying it in one's car or directing where
22 it go. Constructive possession simply means
23 the power at a given time to exercise dominion
24 or control over a thing either directly or
25 through another person or persons.

You will note that in describing the elements of the crime I have said that the defendant must have acted knowingly. An act is done knowingly if it is done voluntarily and purposefully, the exercise of a free choice, and not because of mistake, accident, mere negligence or other innocent reasons.

In determining whether a defendant acted knowingly and intentionally it is obviously impossible to look into his mind.. Knowledge and intent, however, may be proved by circumstantial evidence. You may thus infer knowledge and intent from a defendant's conduct, his act, his statement and from all the surrounding circumstances. In short, actions speak louder than words when we are trying to decide what is in a person's mind.

You will note also that in describing these elements I have said that the defendant must have acted wilfully. You will note that the indictment uses the word unlawfully, knowingly and wilfully. This means that the defendants must know what they are doing, that he consciously does the act which the law prohibits and that he intended to commit those acts. It

1 does not mean that he must know that his acts
2 violate the law, he simply must consciously
3 know what he is doing.

4 An act is done knowingly if it is done
5 voluntarily and purposely and not because of
6 mistake, negligence or other innocent reasons.

7 An act is wilfull if it is done knowingly
8 and deliberately and with an evil motive or
9 purpose.

10 Unlawfully simply means that the act is
11 something prohibited by law.

12 In determining whether a defendant acted
13 knowingly and intentionally you should consider
14 all of the circumstances shown in the evidence.
15 You should consider such evidence as you recall
16 and believe as to whether a defendant tried to
17 cover up what he was doing, as to whether he
18 tried in any way to conceal his identity, as
19 to whether he dealt in cash and if so why, and
20 any other circumstances shown in the evidence
21 which tends to show whether he acted with a
22 conscious and guilty knowledge.

23 You should consider each defendant separately.
24 If you find that the Government has failed to
25 prove to your satisfaction beyond a reasonable

doubt each of the four elements of the crime
as I have given them to you in the instructions,
or that the defendant whom you are considering
did not knowingly aid and abet another in the
commission of the crime charged in the indict-
ment, you should not hesitate to return a
verdict of not guilty, as to that defendant.

On the other hand, if you find that the
Government has proved to your satisfaction
beyond a reasonable doubt all four elements of
the crime which I have given to you, or the
defendant to whom you are considering knowingly
aided and abetted another in the commission of
the crime charged in the indictment, you should
return a verdict of guilty as to that defendant.

You are instructed that the question of
possible punishment of the defendant in the
event of a conviction is no concern of yours
and should not in any sense enter into or in-
fluence your deliberation. The duty of impos-
ing sentence in the event of a conviction rests
exclusively upon the court.

The function of the jury is to weigh the
evidence in the case and determine the guilt
or the innocence of the defendant solely upon

the basis of such evidence.

When you retire to the jury room, you will treat one another with consideration and respect, as I know you will. If differences of opinion arise, your discussions should be dignified, calm, intelligent.

Your verdict must be based on the evidence and the law, the evidence which was presented in this case as you remember it and the law as I have given it to you in this charge.

You are entitled to your own opinion. No juror should acquiesce in a verdict against his individual judgment. Nevertheless I would point out that no one should enter a jury room with such pride of opinion that he would refuse to change his mind no matter how convincing the arguments of his fellow jurors. Discussion and deliberation are part of our jury process and your deliberations should be approached in that spirit. Talk out your differences. Each of you should decide the case for himself after thoroughly reviewing the evidence and frankly discussing it with your fellow jurors with an open mind and with a desire to reach a verdict. If you do that you will be acting in the true

democratic process of the American jury system.

There are twelve of you on this jury, the remaining alternate will be excused before you retire for your deliberations. Any verdict must be the unanimous verdict of all of you and it must represent the honest conclusion of each of you.

I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of the jury.

Decide the issues submitted to you fairly and impartially and without fear or favor.

Now members of the jury if you find that the Government has failed to establish the guilt of the defendant beyond a reasonable doubt, you should acquit that defendant. If you find that a defendant has not violated the law, you should not hesitate for any reason to render a verdict of not guilty as to him. But on the other hand, if you find as to the defendant you are considering that the Government has established his guilt beyond a reasonable doubt, you should not hesitate because of sympathy nor any other reason to render a verdict of guilty.

1 When you retire to your jury room, you
2 will elect from among your number a foreman
3 or forelady to speak for you, and your foreman
4 or forelady will return an oral verdict in
5 open court as to each defendant of guilty or
6 not guilty.

7 Are there any exceptions, gentlemen?

8 MR. RICCIO: No, sir.

9 MR. FRENCH: The government has none.

10 THE COURT: The alternate jurors now ex-
11 cused from further consideration of this case
12 until 9:30 tomorrow morning. Thank you.

13 (The jury retired at 11:37 A.M.)

14 (2:35 P.M. the jury was returned to the
15 courtroom).

16 THE CLERK: Ladies and gentlemen of the
17 jury, have you agreed upon a verdict, and if
18 so how do you find and who shall say for you?

19 JURY FOREMAN: Yes, we have reached a
20 verdict, Your Honor. We find both defendants
21 guilty as charged.

22 THE CLERK: Harken onto your verdict,
23 ladies and gentlemen of the jury, as the court
24 has recorded it. You say you find both
25 defendants guilty as charged and so say you all?

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No. 74-2056

RICHARD PATRICK CARRIGAN and
ROBERT EDWARD WHITE,

Defendant-Appellants, ~~versus~~
against
UNITED STATES OF AMERICA,

ATTORNEY'S
AFFIRMATION OF SERVICE
BY MAIL

Appellee.

~~Defendant~~

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is
attorney(s) of record for

Defendant-Appellant Robert E. White

That on August 6, 1976 deponent served the annexed Brief of
Defendant-Appellant White, And Appendix.
on Paul V. French, Esq., Assistant U.S. Attorney, Of Counsel
attorney(s) for Appellee
in this action at Federal Building, Albany, New York
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated August 6, 1976

Thomas M. McGanney
The name signed must be printed beneath

Thomas McGanney

Attorney at Law